

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

UNDERGROUND TECHNOLOGIES, )  
Plaintiff, )  
 )  
v. ) No. 3:09-CV-302  
 ) (Phillips)  
RUDY'S CONTRACTING, INC., )  
Defendant. )

MEMORANDUM AND ORDER

Presently pending before the Court is the defendant's motion to dismiss for: (1) lack of personal jurisdiction; (2) in deference to the first-filed suit; and (3) for improper venue; and, in the alternative, to transfer based on improper venue or *forum non conveniens* [Doc. 5]. There is also pending plaintiff's motion to remand to state court [Doc. 9]. In a, "Notice of Mediation" the parties have notified the Court that in a parallel case between the parties, the presiding Judge of the 11<sup>th</sup> Judicial District Court in Harris County, Texas, ordered the parties to attend mandatory mediation [Doc. 16]. Thereafter, no further action has been taken by the parties in this case.

In as much as the instant case is in mandatory mediation, defendant's motion to dismiss [Doc. 5], and plaintiff's motion's to remand to state court [Doc. 9] are **DENIED** with leave to re-file, pending notification from the parties as to the outcome of such mandatory mediation. In the event that the mediation is unsuccessful, and these issues are still viable, the parties may re-file their motions accordingly.

**ENTER:**

s/ Thomas W. Phillips  
United States District Judge